

Exhibit S

611

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X MDL NO. 1456
IN RE: PHARMACEUTICAL INDUSTRY : CIVIL ACTION:
AVERAGE WHOLESALE PRICE LITIGATION : 01-CV-12257-PBS
-----X

THIS DOCUMENT RELATES TO: :
U.S. ex rel. Ven-A-Care of the : CIVIL ACTION:
Florida Keys, Inc. v. Abbott : 06-CV-11337-PBS
Laboratories, Inc. :
-----X

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

-----X
STATE OF ALABAMA, : CASE NO.
Plaintiff, : CV-05-219
v. :
ABBOTT LABORATORIES, INC., : JUDGE
et al., : CHARLES PRICE
Defendants. :
-----X

Deposition of DAVID TAWES, Volume III

<p style="text-align: right;">744</p> <p>1 prices we are using are incorrect, we can provide</p> <p>2 this information to our contractors; we can also</p> <p>3 engage in rule making.</p> <p>4 Do you see that sentence?</p> <p>5 A. Yes.</p> <p>6 Q. Didn't you believe that as of December</p> <p>7 2000, the OIG, in fact, had presented creditable</p> <p>8 information that the AWP prices that Medicare was</p> <p>9 using were incorrect?</p> <p>10 MR. DRAYCOTT: Objection.</p> <p>11 THE WITNESS: How are you defining</p> <p>12 AWP in that instance?</p> <p>13 BY MR. GORTNER:</p> <p>14 Q. Well, I'm defining AWP as the AWP that</p> <p>15 Medicare was using to reimburse prescription drugs.</p> <p>16 A. I guess my point is, it sort of depends</p> <p>17 on how you define AWP and incorrect in that</p> <p>18 sentence. We had certainly presented evidence that</p> <p>19 the AWP prices listed in the compendia that are</p> <p>20 used by Medicare do not reflect actual wholesale</p> <p>21 prices in the marketplace.</p> <p>22 Q. And wasn't it your understanding during</p>	<p style="text-align: right;">746</p> <p>1 is Bates labeled HHD005-0084. It appears to be a</p> <p>2 printout of an e-mail from you, Mr. Tawes, to Linda</p> <p>3 Moscoe, M-O-S-C-O-E, dated Wednesday, May 24, 2000.</p> <p>4 And I will represent to you, Mr. Tawes, that when</p> <p>5 this document was produced to us, the government</p> <p>6 represented that this came from the working files</p> <p>7 from this Office of Inspector General report that's</p> <p>8 been previously marked Abbott Exhibit 094.</p> <p>9 Do you recognize this document?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me what it is?</p> <p>12 A. It is an e-mail from Linda Moscoe, who is</p> <p>13 on our technical support staff, describing the</p> <p>14 information that she had collected from the MDRI</p> <p>15 and that it would be FedExed.</p> <p>16 Q. And I'm sorry, I think I misspoke earlier</p> <p>17 when I described the document. It is, in fact, an</p> <p>18 e-mail from Linda to you, not an e-mail from you to</p> <p>19 Ms. Moscoe; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And in it, she writes: It will contain</p> <p>22 the utilization and pricing data from the MDRI for</p>
<p style="text-align: right;">745</p> <p>1 this time that the Medicare program was using the</p> <p>2 AWP that was listed in these pricing compendia,</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And in fact, if you look back at Appendix</p> <p>6 A, where the Office of Inspector General lists all</p> <p>7 its previous reports, wouldn't you characterize</p> <p>8 these reports as creditable information that AWP</p> <p>9 prices that Medicare was using for reimbursement</p> <p>10 were not actual average wholesale prices?</p> <p>11 A. Yes. The number of reports that we had</p> <p>12 done showed that the AWP prices that Medicare was</p> <p>13 using to set reimbursement were not actual average</p> <p>14 wholesale prices.</p> <p>15 Q. I'm handing you what is being marked as</p> <p>16 Roxane Exhibit 018.</p> <p>17 - - -</p> <p>18 (Whereupon the court reporter marked</p> <p>19 document as Exhibit Roxane 018 for identification.)</p> <p>20 - - -</p> <p>21 BY MR. GORTNER:</p> <p>22 Q. For the record, this is a document that</p>	<p style="text-align: right;">747</p> <p>1 all the NDCs in your request.</p> <p>2 Is that statement referring to, the</p> <p>3 best that you know, that Medicaid drug rebate</p> <p>4 initiative database we spoke about a moment ago?</p> <p>5 A. Yes.</p> <p>6 Q. And what were you seeking from that</p> <p>7 database?</p> <p>8 A. I believe that we were seeking the unit</p> <p>9 rebate amount, as well as the Medicaid utilization</p> <p>10 in a given quarter.</p> <p>11 - - -</p> <p>12 (Whereupon the court reporter marked</p> <p>13 document as Exhibit Roxane 019 for identification.)</p> <p>14 - - -</p> <p>15 BY MR. GORTNER:</p> <p>16 Q. I'm handing you what's been marked as</p> <p>17 Roxane Exhibit 019. For the record, this is a</p> <p>18 document Bates labeled HHD042-0567.</p> <p>19 Do you recognize this document, Mr.</p> <p>20 Tawes?</p> <p>21 A. I don't recognize the specific document,</p> <p>22 but I know in general what it is.</p>

<p style="text-align: right;">748</p> <p>1 Q. Can you explain for me what it is?</p> <p>2 A. It is a printout from the MDRI system</p> <p>3 that shows the average manufacturer price, the best</p> <p>4 price and the rebate amount for a particular NDC</p> <p>5 code.</p> <p>6 Q. And in this particular case, it is NDC</p> <p>7 Code 00054; is that right, at the top?</p> <p>8 A. 00054-8402-11.</p> <p>9 Q. Just so the jury understands, the 00054</p> <p>10 NDC refers to the manufacturer; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. And then the product code, the 8402,</p> <p>13 refers to the actual drug; is that fair to say?</p> <p>14 A. The product.</p> <p>15 Q. The product.</p> <p>16 And then the 11 is the code next to</p> <p>17 the package size code on this printout?</p> <p>18 A. Yes.</p> <p>19 Q. And that, again, refers to the package</p> <p>20 size, right?</p> <p>21 A. Yes.</p> <p>22 Q. Now, you mentioned that -- well, let's</p>	<p style="text-align: right;">750</p> <p>1 Q. And what is average manufacturer price?</p> <p>2 A. It is, in general, the average price paid</p> <p>3 to wholesalers, who then sell to the retail class</p> <p>4 of trade. There are a lot of legal exceptions and</p> <p>5 those sorts of things.</p> <p>6 Q. But your understanding is that this</p> <p>7 average manufacturer price is the price that</p> <p>8 manufacturers send or report to --</p> <p>9 A. CMS for rebate purposes, yes.</p> <p>10 Q. And then the next column is best price.</p> <p>11 What is your understanding of what's</p> <p>12 contained in that column?</p> <p>13 A. The lowest price that manufacturers sell</p> <p>14 the products to particular entities.</p> <p>15 Q. And the next column appears to say rebate</p> <p>16 amount?</p> <p>17 A. Yes.</p> <p>18 Q. Can you describe what that is?</p> <p>19 A. It is the per unit rebate amount that</p> <p>20 manufacturers pay to CMS.</p> <p>21 Q. And do you understand whether there is</p> <p>22 any relationship between the numbers in the rebate</p>
<p style="text-align: right;">749</p> <p>1 take it step by step.</p> <p>2 How did you receive this document?</p> <p>3 A. It was FedExed to me from Linda Moscoe.</p> <p>4 Q. Now, is it your understanding that Linda</p> <p>5 Moscoe was the person who printed out this document</p> <p>6 and then sent it to you?</p> <p>7 A. Yes.</p> <p>8 Q. And she would have sent you documents</p> <p>9 like this for all of the drugs that were being</p> <p>10 reported upon in this OIG report; is that right?</p> <p>11 A. All the ones that would have had data in</p> <p>12 the MDRI system.</p> <p>13 Q. And it appears on the column to the far</p> <p>14 left, there is a column that says covered quarter?</p> <p>15 A. Yes.</p> <p>16 Q. And that is reporting data for each of</p> <p>17 those particular quarters; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And then you mentioned average</p> <p>20 manufacturer price, and that appears to be the</p> <p>21 second column in this document?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">751</p> <p>1 amount column and the numbers in the average</p> <p>2 manufacturer price column?</p> <p>3 A. Yes, there is a relationship.</p> <p>4 Q. What is that relationship?</p> <p>5 A. Depending on whether the drug is a single</p> <p>6 source or multiple source drug, the rebate amount</p> <p>7 may be a percentage of the average manufacturer</p> <p>8 price or it may be the difference between the</p> <p>9 average manufacturer price and the best price for</p> <p>10 single source drugs.</p> <p>11 Q. If it is a multi-source drug, what is</p> <p>12 your understanding of the relationship between the</p> <p>13 rebate amount and the average manufacturer price?</p> <p>14 A. The average manufacturer price is -- the</p> <p>15 rebate is around 11 percent of the average</p> <p>16 manufacturer price, give or take, depending on</p> <p>17 certain inflationary factors that may also come</p> <p>18 into play that are very difficult to explain.</p> <p>19 Q. Okay, so if I gave you, for instance, the</p> <p>20 rebate amount for a particular quarter, would you</p> <p>21 be able to figure out what the average manufacturer</p> <p>22 price was from that rebate amount?</p>

<p style="text-align: right;">752</p> <p>1 A. Not always because of these other factors 2 that may come into play. 3 Q. But generally speaking, you would divide 4 it by .11, right? You divide it by 11 percent, if 5 it was a multi-source drug, to come up with the 6 average manufacturer price, wouldn't you? 7 MR. AZORSKY: Objection to form. 8 THE WITNESS: That would be a 9 starting point, but as I said, a lot of drugs have 10 these additional rebates that are paid based on 11 inflationary factors that would make it -- I 12 certainly wouldn't want to say definitely that just 13 dividing the rebate amount by 11 percent would give 14 me the AMP. 15 BY MR. GORTNER: 16 Q. There may be some exceptions? You are 17 not sure? 18 A. Well, there are a lot of exceptions, 19 because a lot of drugs meet that -- might meet that 20 criteria. 21 Q. So give you approximation of the average 22 manufacturer price, but not the actual specific</p>	<p style="text-align: right;">754</p> <p>1 A. Yes. 2 Q. What office is she located in? 3 A. She is in the technical support staff, 4 which is in our Baltimore office. 5 Q. Do you know what her general job duties 6 are? 7 A. Doing various data collection jobs for 8 databases that are within CMS typically, things 9 that we don't immediately have access to. 10 Q. Okay, so when you need to get particular 11 pieces of information, she would be a point person 12 for you or other staff of the Office of Inspector 13 General to turn to? 14 A. Yes. 15 Q. And you had no problem getting this 16 particular data, did you? 17 A. Not as far as I know. 18 Q. You just asked for it, and Linda Moscoe 19 sent it to you, right? 20 A. Yes. 21 Q. I'm handing you what's been marked as 22 Roxane Exhibit 020.</p>
<p style="text-align: right;">753</p> <p>1 number, right, that was reported? 2 MR. AZORSKY: Objection to form. 3 THE WITNESS: Again, it really 4 depends on the drug itself. For some drugs, it 5 may. For other drugs, it wouldn't. 6 BY MR. GORTNER: 7 Q. Now, going back to the source of this 8 document, your understanding was that Linda Moscoe 9 accessed the MDRI and printed this document, right? 10 A. Yes. 11 Q. How did you know to go to Linda Moscoe to 12 get this type of document? 13 A. She was the only one in OEI at the time 14 that had access to the MDRI system. 15 Q. Has that since changed? Is there someone 16 else who has access to the MDRI system? 17 A. Linda retired, so I assume that someone 18 else has access to it. 19 Q. So whenever you need to get information 20 of the sort from the MDRI database, you would have 21 turned to Linda Moscoe during your time there, and 22 you would now turn to whoever the person is, right?</p>	<p style="text-align: right;">755</p> <p>1 --- 2 (Whereupon the court reporter marked 3 document as Exhibit Roxane 020 for identification.) 4 --- 5 BY MR. GORTNER: 6 Q. For the record, this is a document that's 7 been Bates labeled HHD042-0568. 8 Can you identify this document, Mr. 9 Tawes? 10 A. It is another printout from the MDRI for 11 a different NDC code that contains the same 12 information as described before. 13 Q. Right. It contains the average 14 manufacturer price going back to February 1997; is 15 that right? Or is that a quarter for 1997? 16 A. It would be the second quarter of 1997. 17 Q. And then it contains best price 18 information going back to the second quarter of 19 1997; isn't that right? 20 A. Yes. 21 Q. And it contains rebate amounts from the 22 first quarter of 2000 back to the second quarter of</p>

<p style="text-align: right;">756</p> <p>1 1997?</p> <p>2 A. Yes.</p> <p>3 Q. And that's the same date range as on</p> <p>4 Roxane Exhibit 020, right? I'm sorry, Roxane</p> <p>5 Exhibit 019?</p> <p>6 A. Yes.</p> <p>7 Q. That you have -- this sheet gave you</p> <p>8 information on average manufacturer price, best</p> <p>9 price and rebate amount for this particular NDC</p> <p>10 from the first quarter of 2000 all the way back to</p> <p>11 February 1997, right?</p> <p>12 A. Yes.</p> <p>13 Q. And as far as you know, these documents</p> <p>14 were produced to you or printed and produced to you</p> <p>15 in the normal course of Linda Moscoe's business</p> <p>16 activities?</p> <p>17 A. Yes.</p> <p>18 Q. This is part of her job, right, was to</p> <p>19 locate data like MDRI data, print it out and send</p> <p>20 it to you; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you reviewed this and took this into</p>	<p style="text-align: right;">758</p> <p>1 average manufactured price data that Roxane</p> <p>2 Laboratories apparently sent to CMS. I will ask</p> <p>3 that counsel abide by the terms of the governing</p> <p>4 protective order.</p> <p>5 BY MR. GORTNER:</p> <p>6 Q. I would like to show you what is being</p> <p>7 marked as Roxane Exhibit 021.</p> <p>8 ---</p> <p>9 (Whereupon the court reporter marked</p> <p>10 document as Exhibit Roxane 021 for identification.)</p> <p>11 ---</p> <p>12 BY MR. GORTNER:</p> <p>13 Q. For the record, this is a multi-page</p> <p>14 document that has been Bates labeled HHD005-03336</p> <p>15 through 3338. It is a document entitled NDCs</p> <p>16 Matching HCPCS Definitions, and it has your name on</p> <p>17 the lower left.</p> <p>18 Do you recognize this document, Mr.</p> <p>19 Tawes?</p> <p>20 A. Yes.</p> <p>21 Q. I will represent to you that this</p> <p>22 document also came out of the working files for</p>
<p style="text-align: right;">757</p> <p>1 account as you prepared the report that we are</p> <p>2 discussing, which is the Office of Inspector</p> <p>3 General report, marked as Abbott 094, right?</p> <p>4 A. Yes.</p> <p>5 Q. And based upon Ms. Moscoe's e-mail, you</p> <p>6 would have received this data some time around May</p> <p>7 25, 2000; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Was this the first time that you had</p> <p>10 looked at MDRI data like this?</p> <p>11 A. I don't remember.</p> <p>12 Q. You are not sure one way or the other?</p> <p>13 A. Right.</p> <p>14 Q. Have you looked at MDRI data like this</p> <p>15 since that time?</p> <p>16 A. Yes.</p> <p>17 Q. For other reports?</p> <p>18 A. Yes.</p> <p>19 MR. GORTNER: I'd like to designate</p> <p>20 what's been marked as Roxane Exhibit 019 and Roxane</p> <p>21 Exhibit 020 as highly confidential, pursuant to the</p> <p>22 case management order in this case. They contain</p>	<p style="text-align: right;">759</p> <p>1 this Office of Inspector General report that's been</p> <p>2 marked Abbott Exhibit 094.</p> <p>3 A. Okay.</p> <p>4 Q. Can you tell me what this document is?</p> <p>5 A. It is a listing of NDCs that we believed</p> <p>6 matched the HCPCS definition for any of the drugs</p> <p>7 included in this report.</p> <p>8 Q. And did you compile this list?</p> <p>9 A. Yes.</p> <p>10 Q. Did you compile it during the course of</p> <p>11 your regular business activities?</p> <p>12 A. Yes.</p> <p>13 Q. And where would you have gathered the AWP</p> <p>14 information from?</p> <p>15 A. Red Book.</p> <p>16 Q. And as you looked at the Red Book, either</p> <p>17 on line or a copy, you entered AWP information</p> <p>18 contemporaneously with this list?</p> <p>19 A. Yes.</p> <p>20 Q. And these represent all the NDCs that --</p> <p>21 and the pricing information that you reviewed and</p> <p>22 considered while preparing the report that's been</p>